

LAW & MOTION TENTATIVE RULINGS

DEPARTMENT 5

June 30, 2022

8:30 a.m./1:30 p.m.

**15. CHRIS BRACKETT V. JENNIFER BRACKETT**

**SFL20170168**

Respondent filed a Request for Order (RFO) on May 10, 2022, requesting an order for Petitioner to undergo hair follicle drug testing. In support of her RFO petitioner included her declaration as well as the declarations of numerous friends and family. The RFO and all required documents were personally served on Petitioner on May 11, 2022. Petitioner has not filed a responsive declaration.

When a matter is required, or permitted, to be supported by a written declaration, such declaration must be certified by the person giving the declaration to be true under the penalty of perjury. Cal. Civ. Pro. § 2015.5. Declarations that are not made under the penalty of perjury under the laws of the State of California are not deemed sufficiently reliable to be admissible into evidence. *Bombardier Recreational Products, Inc. v. Dow Chemical Canada ULC*, 216 Cal. App. 4<sup>th</sup> 591 (2013).

While Respondent has made her declaration under the penalty of perjury, the remainder of the supporting declarations were not. The court is unable to consider those declarations as they were not properly made.

It is the duty of the court to determine the best interests of minor children in child custody matters. Cal. Fam. Code §3011(a). In making this determination, the court is to consider, among other things, the “habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol or the habitual or continual abuse of prescribed controlled substances by either parent. *Id.* Where an individual who is the subject of a child custody proceeding is seeking custody of a minor child, the court may order testing for illegal drug use or alcohol abuse “...if there is a judicial determination based upon a preponderance of the evidence that there is the habitual, frequent or continued illegal use of controlled substances or the habitual or continual abuse of alcohol...” Cal. Fam. Code § 3041.5. “The court shall order the least intrusive method of testing ...The results shall be confidential, shall be maintained as a sealed record in the court file, and may not be released to any person except the court, the parties, [and] their attorneys...Any person who has access to the test results may not disseminate copies or disclose information about the test results to any person other than a person who is authorized to receive the results...” *Id.* Any unauthorized disclosure of the test results is punishable by sanctions up to \$2,500. *Id.*

If the test comes back positive, the individual tested has the right to a hearing, if requested, to challenge the test results. *Id.*

Respondent has cited several instances in which Petitioner admitted he was “too high” to pick up the minor children for visitations. In addition, she notes his unhealthy appearance, his inability to communicate verbally at times, and at least one D.U.I. Based on Respondent’s

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declaration, the court finds, by a preponderance of the evidence, that there may be habitual, frequent, or continued use of controlled substances and/or alcohol. As such, the court finds it appropriate to order Petitioner to submit to a full panel hair follicle test no later than July 8, 2022. The test is to be conducted by Timely Testing in Reno Nevada, or such other testing facility as Petitioner and Respondent may agree to.

Petitioner shall provide the court and Respondent with copies of the test results. Respondent is ordered to maintain the confidentiality of the results of the test with any failure to do so punishable by civil fines.

Respondent is to pay for the cost of testing. If the test results are negative then no further testing is required at this time.

If the test results are positive, then Petitioner is to reimburse Respondent for the cost of the test within five days. Further, if the test results are positive, Petitioner is ordered to submit to random urinalysis drug and alcohol testing at least two times per month.

Petitioner is ordered not to consume alcohol, narcotics, or restricted dangerous drugs, except with a prescription, within 24 hours prior to, and during his parenting time.

**TENTATIVE RULING #15: PETITIONER IS ORDERED TO SUBMIT TO A FULL PANEL HAIR FOLLICLE TEST NO LATER THAN JULY 8, 2022. THE TEST IS TO BE CONDUCTED BY TIMELY TESTING IN RENO NEVADA, OR SUCH OTHER TESTING FACILITY AS PETITIONER AND RESPONDENT MAY AGREE TO. PETITIONER SHALL PROVIDE THE COURT AND RESPONDENT WITH COPIES OF THE TEST RESULTS. RESPONDENT IS ORDERED TO MAINTAIN THE CONFIDENTIALITY OF THE RESULTS OF THE TEST WITH ANY FAILURE TO DO SO PUNISHABLE BY CIVIL FINES. RESPONDENT IS TO PAY FOR THE COST OF TESTING. IF THE TEST RESULTS ARE NEGATIVE THEN NO FURTHER TESTING IS REQUIRED AT THIS TIME. IF THE TEST RESULTS ARE POSITIVE, THEN PETITIONER IS TO REIMBURSE RESPONDENT FOR THE COST OF THE TEST WITHIN FIVE DAYS. IF THE TEST RESULTS ARE POSITIVE, PETITIONER IS ORDERED TO SUBMIT TO RANDOM URINALYSIS DRUG AND ALCOHOL TESTING AT LEAST TWO TIMES PER MONTH. PETITIONER IS ORDERED NOT TO CONSUME ALCOHOL, NARCOTICS, OR RESTRICTED DANGEROUS DRUGS, EXCEPT WITH A PRESCRIPTION, WITHIN 24 HOURS PRIOR TO, AND DURING HIS PARENTING TIME. RESPONDENT SHALL PREPARE AND FILE THE FINDINGS AND ORDERS AFTER HEARING.**

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**16. KATHLEEN DIANEE WALSHAW V. SCOTT JOSEPH WALSHAW**

**PFL20200226**

On February 23, 2022, Petitioner filed a Request for Order (RFO) requesting a change in child support and parenting time. Parties were referred to Child Custody Recommending Counseling (CCRC) for an appointment on April 7, 2022 and a review hearing on May 26, 2022. Respondent was personally served with the RFO, which satisfies the requirements of Family Code section 215 for post-judgment modifications.

On April 21, 2022, parties appears on a hearing set for Petitioner's RFO to modify spousal support. Parties reached a stipulation on the issue of spousal support, and also requested the May 26, 2022 hearing on the RFO for child support and parenting time be advanced to that day. Parties further stipulated that the issue of child support would be dropped from the RFO. Parties requested a re-referral to CCRC as Petitioner had missed the April 7, 2022 appointment. Parties also requests the court reset the review hearing date. The court re-referred the parties to CCRC for an appointment on May 20, 2022 and a further review hearing on June 30, 2022.

On May 20, 2022, only Petitioner appeared at the CCRC appointment. The CCRC report indicates Respondent has been hospitalized on May 2, 2022, with an unknown discharge date. It is unclear whether Respondent will be able to participate in these proceedings.

On May 25, 2021, Petitioner) requesting a Move Away Order which would allow her, and the minor children, to move to San Antonio, Texas. The RFO was served on May 25th via U.S. Mail. As this motion was brought post judgement, service must comply with Family Code section 215(b). Petitioner did not file an address verification. Respondent has not filed a responsive declaration. As Petitioner has not filed a Responsive Declaration, the court cannot find he was properly served. The May 25, 2022 RFO is denied without prejudice.

No Supplemental Declarations have been filed.

Regarding the February 23, 2022 filed RFO to modify Respondent's parenting time, the parties have been referred to CCRC twice within the last six months, with Petitioner missing one appointment and Respondent hospitalized for the second. The court is unclear what Respondent's current status is and what if any ability he has to participate in parenting time with the minors. The court finds it needs more information; therefore, the parties are ordered to appear at the hearing.

**TENTATIVE RULING #16: PARTIES ARE ORDERED TO APPEAR FOR HEARING.**

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**18. PATRICIA DAVY V. CHARLES DAVY**

**PFL20200494**

On February 10, 2022, Petitioner filed an ex parte emergency request for temporary sole physical and legal custody of the minors. On February 14, 2022, the court granted the ex parte request and ordered Petitioner temporary sole physical and legal custody of the minors. Respondent was ordered to have supervised parenting time once per week. The parties were referred to Child Custody Recommending Counseling (CCRC). Petitioner filed a Request for Order (RFO) on February 14, 2022, requesting the court change the custody orders and parenting plan. Parties were referred to CCRC for an appointment on March 12, 2022 and a review hearing on May 6, 2022. Respondent was served on February 18, 2022.

On February 22, 2022, Petitioner filed a RFO requesting a modification of child custody as well as orders for child support. Petitioner filed an Income and Expense Declaration the same day. Parties were referred to CCRC for an appointment on March 15, 2022. Respondent was served by mail on February 25, 2022. Petitioner requests the parties have joint legal and physical custody of the minors. Petitioner also requests the court order guideline child support.

On February 28, 2022, Petitioner filed a RFO requesting the court change guideline child support to reflect the temporary change in custody. Petitioner filed an Income and Expense Declaration the same day. Respondent was served on March 1, 2022.

On March 16, 2022, the court issued an ex parte minute order correcting the CCRC appointment date. CCRC was set for March 21, 2022 at 9:00 am. The review hearing remained set on May 6, 2022.

The Department of Child Support Services (DCSS) filed a Notice of Substitution of Payee on April 12, 2022. Parties were served by mail on April 11, 2022.

On April 15, 2022, DCSS filed a Responsive Declaration to the RFO for child support consenting to guideline support. Parties were served by mail on April 15, 2022. DCSS requests the issue of child support be continued to the child support calendar with the child support commissioner in accordance with Family Code section 4251.

Respondent filed an Income and Expense Declaration on April 28, 2022. Petitioner was personally served on March 25, 2022. It does not appear DCSS was served with the Income and Expense Declaration.

Parties appeared on May 6, 2022. The court reserved retroactive modification of child support to the date of filing, February 28, 2022. Respondent stated he did not agree with the CCRC report. Parties were rereferred to CCRC for an appointment on May 16, 2022 and a review hearing set for June 30, 2022.

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Parties attended CCRC on May 16, 2022 and were able to reach a full agreement. A CCRC report was filed on May 17, 2022 and mailed to the parties on May 20, 2022. Parties agree to joint legal custody of the minors. Parties agreed to a parenting plan as set forth in the CCRC report. Parties agreed to keep the current holiday schedule in place. Respondent agreed to participate in an assessment with a family therapist to determine if he and the minors would benefit from family therapy sessions. If the therapist deems that family therapy is necessary, then Respondent shall abide by the therapist's treatment recommendations and participate at a frequency and duration as directed by the therapist.

The court finds the agreements of the parties to be in the best interests of the minors and adopts them as the court's order. All prior orders remain in full force and effect.

The court continues to reserve retroactive modification of child support to the date of filing, February 28, 2022. The court continues the issue of child support to the child support calendar on August 8<sup>th</sup>, 2022 at 8:30 AM in Department 5.

Petitioner shall prepare and file the Findings and Orders After hearing.

**TENTATIVE RULING #18: THE COURT ADOPTS THE AGREEMENT OF THE PARTIES AS THE COURT ORDER. THE COURT CONTINUES TO RESERVE RETROACTIVE MODIFICATION OF CHILD SUPPORT TO THE DATE OF FILING, FEBRUARY 28, 2022. THE COURT CONTINUES THE ISSUE OF CHILD SUPPORT TO THE CHILD SUPPORT CALENDAR ON AUGUST 8<sup>TH</sup>, 2022 AT 8:30 AM IN DEPARTMENT 5. ALL PRIOR ORDERS REMAIN IN FULL FORCE AND EFFECT.**

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**19. SUSAN MOSKALETS V. VICTOR MOSKALETS**

**PFL20210479**

On May 5, 2022, Respondent filed a Request for Order (RFO) requesting the court set aside the temporary spousal support order made on February 17, 2022. Petitioner was served by mail and electronically on May 6, 2022. Respondent requests the court set aside the current spousal support order as he is unable to work due to medical issues and therefore, is not currently earning and income. Respondent filed an Income and Expense Declaration on May 4, 2022. Petitioner was served with the Income and Expense Declaration concurrently with the RFO.

On June 17, 2022, Respondent filed a Declaration with an attached letter from El Dorado Community Health Center. Petitioner was served by mail on June 17, 2022. Respondent asserts in his declaration he is experiencing high blood pressure and back pain and is therefore, unable to drive the 14-hour shifts required as a truck driver.

Petitioner has not filed a responsive declaration.

The court finds the issue of temporary spousal support is currently set for trial on July 6, 2022. Therefore, the court continues Respondent's request to set aside the temporary spousal support to trial on July 6, 2022.

On June 23, 2022, the parties appeared for a hearing on Petitioner's RFO to reinstate homeowners' insurance. Parties stipulated to Respondent reinstating the homeowners' insurance and providing proof to the court on June 30, 2022. Parties are ordered to appear. Respondent shall bring proof of the reinstatement of homeowners' insurance.

**TENTATIVE RULING #19: THE COURT CONTINUES RESPONDENT'S REQUEST TO SET ASIDE THE TEMPORARY SPOUSAL SUPPORT ORDER TO THE TIME OF TRIAL ON JULY 6, 2022. THE COURT CONTINUES TO RESERVE JURISDICTION TO MODIFY SPOUSAL SUPPORT TO FEBRUARY 17, 2022. PARTIES ARE ORDERED TO APPEAR, AND RESPONDENT IS ORDERED TO PROVIDE PROOF OF REINSTATEMENT OF HOMEOWNERS' INSURANCE.**